



POLICE DEPARTMENT

August 27, 2009

MEMORANDUM FOR: Police Commissioner

Re: Detective Ricardo Bocachica
Tax Registry No. 927937
Narcotics Borough Bronx
Disciplinary Case No. 84268/08

The above-named member of the Department appeared before me on April 16, 2009, charged with the following:

1. Said Detective Ricardo Bocachica assigned to Narcotics Borough Bronx, while on duty on or about 1630 hours on February 9, 2007, having custody of a person, whose identity is known to the NYPD, did wrongfully conduct a strip search of said person while outside a police precinct, in the vicinity of 2485 Devoe Terrace, in Bronx County: to wit, said Detective lowered the pants of said person and revealed the person's underwear and buttocks.

P.G. 208-05, Page 2, Paragraph 1C (1) – ARREST – GENERAL SEARCH
GUIDELINES

2. Said Detective Ricardo Bocachica, assigned as indicated in Specification One, at the time, date, and location indicated in Specification One, did abuse his authority, in that he conducted a cavity search of the person indicated in Specification number One.

P.G. 208-05, Page 2, Paragraph 1C (2) – ARREST – GENERAL SEARCH
GUIDELINES

The Department was represented by Yadhira Gonzalez-Taylor, Esq., Department Advocate's Office. Also present was Benjamin Schneider, Esq., Civilian Complaint Review Board. The Respondent was represented by James Moschella, Esq.

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The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 1 and 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Carlos Lopez and Brian Edmondson.

Carlos Lopez

Lopez, the complainant in this case, testified that he works "off the books" at a Getty Gas Station in Scarsdale, New York.

Lopez testified that he was arrested by the Respondent on February 9, 2007, across the street from [REDACTED]. He said he was arrested for possessing marijuana, specifically, "two bags of weed." He admitted that he had been smoking marijuana an hour or two before being arrested. Lopez planned to smoke the two bags of marijuana that he possessed at home. He said he purchased the two bags around the neighborhood, "a block, block and a half" away from where he was arrested.

At about 4:20 pm on February 9, Lopez recalled that he was across the street from [REDACTED] "arguing on the phone with my girl on my Nextel." He was on the phone for a "good five, 10 minutes" with his girlfriend when he saw his friend Jermaine Harrison. Harrison then informed him that "there was a guy across the street and he looked funny." He understood this to mean that Harrison was referring to the presence of

“a decoy, a detective, [an] undercover [officer].” Lopez claimed that he was too busy arguing with the girlfriend to be bothered. He contended that his demeanor did not change despite seeing this “decoy,” but he did walk “away from Jermaine” because he did not “want to be in that type of area at that time.”

Lopez testified that he was approached by a bunch of officers about two to three minutes after his conversation ended with Harrison. He noted that while he was talking to Harrison, he never handed him any objects or money nor did Harrison hand him anything. Lopez said the Respondent approached him and began to search his coat pockets, his sweater and his jeans. At this point, Lopez took the two bags of marijuana that he had in his “hand and I threw it in my mouth.” He said he was “nervous” and “scared” and “didn’t want to get locked up for having possession of marijuana.” After placing the two bags in his mouth, Lopez said the Respondent “stuffed his finger in my mouth.” Lopez thereafter bit the Respondent’s finger because he believed that the Respondent “shoved” his fingers too deep in my mouth.” The Respondent then screamed and Lopez claimed that the officers all “jumped on top of me, started bending my fingers, bending my hand, I got maced...I got thrown on the ground and then I got cuffed.”

Lopez recalled that he was wearing three layers of clothing the day he was arrested due to the cold weather. He claimed that it was 20 to 25 degrees. He demonstrated to the Court the manner in which the Respondent searched him while he was standing, and specified that he searched his jacket, his jacket pockets, his sweater and his jeans pockets. At this point, none of the articles of clothing that he was wearing were removed. In addition to his underwear, Lopez was wearing two pairs of pants. He

said his pants were on his waist and not “under my butt area.” He said he was also wearing a belt.

Subsequent to biting the Respondent, Lopez ended up face down on the ground. He stated that he knew that all of his clothing was still on “because I felt it on my body.” He explained that he “felt my belt, my belt was still on my—my belt was still tight on my waist.” Lopez further testified that the Respondent searched “my jeans pocket, my coat pocket again and he pulled down all three layers of clothes that I had on, he pulled them down and started touching, started searching my butt area. The clothes he was referring to was his “boxers...thermals and...jeans.” He knew that this clothing had been removed because he “felt cold on my butt area.” He said that the Respondent then “started searching my butt area” and specified that he felt the Respondent’s hand on the “inner and outer” parts of his buttocks. He knew that it was the Respondent performing this search because he was the only officer present. The other officers were “busy with Jermaine Harrison.” He said that the marijuana was recovered because he “spit it out. It was all chewed up.”

A compact disc (CD) video (Department’s Exhibit [DX] 1) was played for the Court. The video was made with a cellular phone apparently by someone who was located on an upper floor of the nearby building. Lopez said that he first saw this video a week before testifying in this matter, at the Civilian Complaint Review Board (CCRB). In reviewing it, he recognized himself and the Respondent. He claimed that the video depicted the Respondent “standing on top of me, and he was searching me, he was pulling my pants down searching my butt area.” Lopez admitted that the video did not

capture the entire incident; he said that it does not show him being “thrown down and getting maced and hit by the officers.”

Lopez testified that he pled guilty to a violation pertaining to the marijuana and was sentenced to two days of community service which he completed. Lopez testified that the two bags of marijuana that he had were “not that big...like two nickel bags.” He reiterated that he intended to smoke them for personal use. He denied having any marijuana in his buttocks or anus area and similarly denied having marijuana anywhere else in the area.

On cross-examination, Lopez acknowledged that the video (DX 1) shows the Respondent rolling him over from one side to another, and also shows him being placed face down on the ground. He said that the Respondent was searching his pockets at this time. Lopez said that the video does not show the Respondent striking him because “the video is only 60 seconds” and “all the striking stopped at [the] time” of the video.

Lopez reiterated that he “was hit, getting punched, kicked,” by three or four officers, who struck him “once or twice.” Lopez recalled his March 1, 2007 interview with the CCRB investigators. When it was pointed out that he told investigators that he “felt a lot of blows. More than 10 hits. I was getting hit” he testified “I don’t recall what I told them.” He denied that he embellished or exaggerated the incident with the Respondent. He also denied that he was inaccurate in stating that he was struck once or twice during his testimony at trial claiming that “It happened over a year ago. My memory is shot.”

Lopez denied that he still smokes marijuana and said that he has not smoked it in over a year. As a result of his arrest for driving with a suspended license in 2008, he is in

a drug treatment program. That arrest occurred after the arrest in this case, and Lopez was sentenced to three years of probation and a court-ordered drug program. Lopez denied that he lied to his probation officer about his employment; he contended that he told them that he works but because it is "off the books...they feel like it's not a job." Lopez claimed that he filed a 2008 tax return as "self-employed." He also claimed that he declared all of the income that he made working at Getty. He reiterated that he informed the Criminal Court that he was employed, but they do not regard an "off the books" job as legitimate employment.

Lopez said that he has been arrested three times, including the incident with the Respondent. One such arrest was in 2001 for "joyriding," which Lopez explained meant "another person stole a vehicle and I was just sitting inside the vehicle." He denied having any drugs on his person at that time and said he was sentenced to five years of probation and received youthful offender status. Lopez agreed that he pled guilty to a charge as a result of being arrested by the Respondent and received a sentence of community service. He also acknowledged that he is on probation as a result of pleading guilty to a misdemeanor in another case in the Bronx. Lopez did not recall any other drug arrest, and remarked, "I don't keep records of that."

In 2007, Lopez admitted that he was a frequent user of marijuana. He agreed that he smoked marijuana an hour or two before being arrested by the Respondent and further agreed that he purchased the two bags of marijuana that he put in his mouth from "some guy around the neighborhood." Lopez indicated that he purchased the bags of marijuana about a block-and-a-half away from Devoe Terrace. He acknowledged that he lives on Devoe Terrace, across the street from where he was arrested.

Lopez stated that he was having a telephone conversation before he crossed the street to talk to Harrison. When asked why Harrison would have informed him about the "decoy," Lopez said, "I guess he had nothing better to do." He denied purchasing marijuana from Harrison and denied having a conversation about drugs with him. Lopez said that Harrison was in front of [REDACTED] and disputed that he deals drugs. He testified that he was not concerned with what Harrison had to say because he was arguing with his girlfriend on the phone. Similarly, he had no idea why an undercover detective would be interested in Harrison.

Upon being approached by police, Lopez admitted that he attempted to swallow two nickel sized bags of marijuana. He clarified that he did this in an effort to prevent his arrest and to avoid going to jail. Lopez indicated that he does not believe marijuana is a drug; he remarked, "It's not drugs, it's only marijuana. I don't believe marijuana is drugs." He was aware, however, that it was unlawful, but testified that he does not believe smoking marijuana to be a violation of the law. He indicated that when the Respondent started speaking to him, the two bags of marijuana were in his hand after removing them from his coat pocket. He denied, again, having previously engaged in a drug transaction on Devoe Terrace, stating that the two bags of marijuana came from a block-and-a-half away.

Lopez affirmed that he was told that police officers were on [REDACTED]. He also acknowledged that he was approached by the Respondent, but denied that he removed the bags of marijuana from his pocket in front of the Respondent. He did this prior to being approached by the Respondent when he "seen [*sic*] all these cops coming up to me." Lopez intended to throw the two bags of marijuana on the ground but decided

to secrete them in his mouth instead. He believed that the Respondent saw him chewing the marijuana and denied that he or any other officer instructed him to spit it out. The Respondent then reached into his mouth and attempted to pull the marijuana out, unsuccessfully. Lopez bit the Respondent's finger and explained that he did so because "I don't know where his (the Respondent's) hands been at." Lopez admitted that it was not appropriate to bite a police officer's finger.

Subsequent to biting the Respondent's finger, Lopez claimed that he spit the marijuana out. He denied that a struggle ensued and or that he resisted the officers and had to be maced. Lopez was then confronted with two responses from his CCRB interview, taken three weeks after he was arrested:

Question: All right. And did he hit you again?

Answer: He pulled his hands out of my mouth and said I bit him. That's what he said, I bit him. He pulled his hand out of my mouth. The weed is still in my mouth because I was playing with it in my tongue.

Question: And how long after you were maced were you handcuffed?

Answer: As soon as I got maced, that's when I gave up. I couldn't take the mace. I gave up so he could cuff me or pick me up off the floor.

Lopez admitted to giving both these responses during his interview. He still maintained that he did not struggle with the Respondent and further maintained that he "gave up the weed...spit the weed out" directly after the Respondent inserted his finger in his mouth. Lopez then agreed that it was only after he was maced and on the ground did he spit the weed out' but continued to insist that he did not struggle with the Respondent.

Lopez reiterated that he was wearing three pairs of pants including his boxers the day he was arrested. He was wearing jeans as an outer garment, thermals underneath, followed by tight-fitting "mid-thigh" length briefs. Lopez said that the videotape (DX 1)

depicts all three layers of his clothing being pulled down “to my butt area...down close to my mid thigh.” After being asked to demonstrate, the Court took notice that Lopez claimed that his pants were removed six to seven inches below his belt line.

On further cross-examination regarding his responses to CCRB, Lopez was asked to explain this statement:

“At that point, at that point, I just threw my hands into the back and they cuffed me. That’s when they all got off of me, but my face was on the floor. At that point, I’m still butt naked, you understand. I’m still exposed to the city I’m butt naked in the shower.”

Lopez said regarding this statement to investigators that he was “[p]robably being a little exaggerated but—.” When asked if the video (DX 1) depicts him “butt naked,” he testified, “I mean, butt naked is butt naked, but having your pants down is like being butt naked.”

Lopez testified that the CCRB investigator was the one who informed him of the existence of the video in this case (DX 1). Lopez added that while he had knowledge of the video he did not view it before giving his statements to the investigator.

Upon inquiry by the Court, Lopez denied telling CCRB that he was “lying there like you were butt naked like you would be in the shower...” Lopez’s statement was again read in court to remind him of what he said and Lopez then said “I mean, I probably over-exaggerated the situation.”

On continued cross-examination, Lopez was asked if he recalled telling CCRB investigators that the Respondent was grabbing his testicle area. Lopez replied “It happened a year ago. I don’t recall that.”

Lopez was then read a portion of his interview, “And that’s when he was—the Hispanic one, the one that jumped it off, he was searching through my butt cheeks and all

that outside, grabbing my balls and all of that.” Lopez thereafter recalled stating this and contended that it was shown on the video (DX 1). Remarking about his testicles he testified, “They sit right there, they not too far. I got big testicles.” This occurred while he was laying face down. He added that the video showed that the Respondent was “Searching my butt area, my anal area, everywhere, yeah.”

Lopez testified that “a whole lot of people” were around on [REDACTED] in front of the building while he was being searched by the Respondent. He was unable to cite any names of individuals. He said that a person known as “Spanky” cuts hair on [REDACTED]. He “guessed” that Edmondson was his last name and indicated that he has not seen him in a year or two because he moved. Lopez recalled that he saw “Spanky” at “the corner store” prior to being arrested. He denied that he and “Spanky” ever smoked marijuana together. He did not recall seeing him after being arrested and did not recall seeing him on [REDACTED] that day. Lopez indicated that the only person he saw was Jermaine Harrison but noted “a lot of people” were outside. He did not know if “Spanky” was at the scene of his arrest.

On redirect examination, Lopez testified with respect to the conversation that he was having with his girlfriend, Lopez acknowledged that they were arguing. He said that he was focusing on the conversation and not whether anyone was around the neighborhood. Similarly, he did not have an opportunity to see if anyone else in the area was involved in a drug transaction.

Lopez recalled that aside from police officers, there was “a good eight to nine people including the people that were looking out the window” present when he was arrested. Lopez recalled that when he placed the marijuana in his mouth, the Respondent

had his back turned to him. It was not until he finished his search of Lopez did the Respondent turn his back to him.

Lopez said that the last time he smoked marijuana was “[l]ike a year-and-a-half ago.” He said, “I don’t do no other drugs.” He could not remember if he saw Jermaine Harrison arrested on the same day he was arrested. He indicated that the marijuana came out of his mouth once he was maced.

Regarding his clothing, Lopez said that they were removed all at the same time. Specifically, his pants, thermals and underwear were “taken off” simultaneously. Lopez noted that he does not shower in front of other people or allow others to view him in the shower. In response to the Court’s inquiry, Lopez said that his jeans, thermals and underwear were “pulled down,” down towards his “butt area.” He clarified that his clothing was never removed off his body completely. While on the ground, Lopez said that he could not see everything happening around him. He was able to see the Respondent when he turned him around.

Lopez said he has not filed a Notice of Claim or a lawsuit against the City of New York or the Respondent. He acknowledged that he has made complaints about the police, after this incident.

The day he was arrested, Lopez said he had “a couple of dollars” on him.

On re-cross examination, Lopez testified that he was not working at the time he was arrested. He said he was carrying \$10-\$20 on him, money that he got from his mother. Lopez explained that his mother gave him money to pay a bill and buy “other things” and he kept the change, which he used to purchase the two bags of marijuana. He reiterated that he intended to smoke the marijuana in his house.

Lopez did not recall having \$75 on him when he was arrested. He reiterated the fact that his mother had previously given him some money that he used to pay a bill. He indicated, "It happened a year ago. I don't remember how much money I had a year ago."

Lopez agreed that when the Respondent approached him, he already knew his name. Lopez denied that the Respondent told him that there was an open investigation on him, but he did accuse him of possessing and selling cocaine out of his apartment.

When asked if he over-exaggerated the incident to the CCRB investigator where he said that he was naked like in the shower, Lopez replied, "I mean, I got a good sense of humor." He also conceded that he was not actually hit more than 10 times, as he stated in his CCRB interview. Lopez contended that while he was on the ground, each time he moved his face, the Respondent would kick him. He explained that it was not depicted on the video tape (DX 1) because it was only a 60 second tape.

On continued redirect examination, Lopez indicated that he was kicked before the Respondent pulled his pants down. He specified that it was a "good 20 minutes, 15 minutes. I don't remember. I don't recall" before his pants were searched.

The Court's Observation of the Video

The video is relatively short, approximately a minute, and according to the testimony of Lopez and the subsequent testimony of the Respondent it depicts Lopez on the ground on his back and the Respondent standing over him. This Court also observed a metal fence approximately seven feet high and another male on the ground near the fence, presumably Harrison, and several other males standing in close proximity to the

Respondent, Lopez and Harrison. The video was taken by someone who was positioned at a location several stories above the ground at a location looking down at the fence and the aforementioned individuals.

At one point the Respondent, while standing over Lopez, rolls him over onto his stomach and appears to be searching his waist area. The Respondent's hands never fully disappear inside Lopez's pants---his hands are lifting layers of clothing from the waist band area and running his hands along that area. He does this for a few seconds. At no time does he pull Lopez's pants down below his waist exposing his buttocks nor can his hands be seen going inside his buttocks. The video does not indicate that a strip search took place and it certainly does not show that a cavity search of Lopez took place.

During the video the Respondent, is not seen striking Lopez with either his hands or his feet.

Brian Edmondson

Edmondson has been a resident of the Bronx for a little more than 10 years. He works part-time at Malally's Park performing security and maintenance duties.

Edmonson testified that he "pretty much" was in the vicinity of [REDACTED] on February 9, 2007 at 4:30 pm. He said he resided at [REDACTED] which was in the middle of the block, and said he was "apparently cutting hair in my garage" at that time. Upon leaving his garage to go to the store, Edmondson testified that he noticed that a group of plain clothes police officers had stopped a group of his "associates" and had them against a wall. When asked if he remembered who the officers had stopped, he said, "I know one was Carlos. I call him Lopes... [and] my other friend

Jean, some dude that hangs out with us on a regular. And another person, I don't know who he was."

Edmondson recalled that Lopez was wearing jeans and a jacket "or something like that." He testified that some of the officers were being "a little rough...especially" with Lopez. He recalled four or five officers being present at the scene and when he stopped to observe what was going on, he was told by an officer to move on. He refused, and claimed that he was told, "walk your ass up the block or whatever the case may be." Edmondson said that the officers were having a "rough time" with Lopez and he "guess[ed]" that one of them had his finger bitten "because he was trying to put his hand, his bare fingers in his [Lopez's] mouth or whatever."

Edmondson further testified that "From the angle where I was at, I was in the middle of the street. It was alternate side parking, so there was hardly no cars on the side, and I seen him slam him on the floor....I seen him like pull his pants down where I seen his butt checks [*sic*], and he like put his hands on it like to spread his ass or some shit like that." Edmondson noted that he was able to observe all of this because of the "angle that I was at, I was at the middle of the street like where a manhole would be sitting right smack in the middle of the street." And as he slammed him down on the floor, I don't know if he was searching him or anything of that nature but there was money floating down the block on the floor...I picked up \$30 or \$40." He said that the officer who had previously told him to "take a fucking walk" took the money out of his hand and put it in a manila envelope. Edmondson started walking home and looked for Lopez's mother to inform her that Lopez was being "tossed around" by the police.

Edmondson testified that when he initially saw Lopez, he was against a wall. He did not see his buttocks until he was on the ground. He noted that while Lopez was on the ground, a number of police officers were present. Edmondson specified that one officer was "over" Lopez, another was in front of him and then a third told him to "take a walk down the block." Edmondson said an officer told him to "take a walk or I am going to lock you up." He believed that these officers were "blocking" him and admitted that his view of the incident was "somewhat" blocked. He knew, however, that he saw Lopez's buttocks because there were no cars on the street, with the exception of the prisoner van.

On cross-examination, Edmondson was asked to describe the officer that he saw standing over Lopez. He was unable to do so because the incident happened two years ago, and that Officer "had his back like turned towards me...." When asked if his memory of the incident had faded over time, Edmondson stated, "Well, I'll put it to you this way. I lived in the block for more than like five years, and I have seen police jump out and do some real horrendous stuff to people." Edmondson indicated that he was once arrested by narcotics officers for "marijuana charges." He agreed that the "whole area" of [REDACTED] is "drug affiliated."

Edmondson recalled speaking to a CCRB investigator about the incident. When asked if he spoke to CCRB over the telephone, he replied that they "[a]pparently came to the block, to the area." Edmondson further recalled that one day, while walking to Lopez's mother's house to eat, as he "sometimes" does, he ran into a person who asked him questions about the incident. He did not recall having spoken to this person on the telephone on a prior date, on March 5, 2007. When informed of the existence of a tape

and transcript of this telephone call, Edmondson admitted that he had a “brief talk” with a CCRB investigator. When confronted with the fact that he informed CCRB that a green truck was in his way in contrast with his testimony that he was able to see because no cars were on the block, Edmondson said no cars were on the block, aside from the green car. He clarified that this green car, Carmen’s car, was not blocking him. He said that the police had Lopez in a courtyard and if he were to tilt his head, he could see everything. Edmondson stated that his response to the CCRB investigator related to the fact that he did not see the officer’s face; he gave a description of the clothing that they were wearing. He reiterated that the green car was the only car on the block because alternate side parking was in effect.

Edmondson affirmed that when he initially saw Lopez, he had just exited his garage and saw Lopez against the wall with two other people.

Edmondson said he never discussed this case with Lopez and indicated that he has since moved from the area. He was then questioned as to this statement that he provided to CCRB:

Talking about Carlos was standing there chatting with a few friends, and the police they ran up on him—on them, and they slammed them up and they was digging in their pockets, and then one police assumed that he swallowed something, which he had a piece of chewing gum in his mouth. Because I know that when he said hi to me, he was chewing. Then the police tried to stick his finger in his mouth, and Carlos bit down on his finger because, you know, that’s illegal to take a bare finger and stick a raw finger in a man’s mouth.

Edmondson explained that Lopez and the other individuals were already on the wall when he came up the block. He stated that once Lopez bit the officer, all three individuals were “put...on the floor” and that is when he “seen [*sic*] what they did.”

When asked how he knew Lopez was not in possession of any contraband, Edmondson testified that in the four years he lived on [REDACTED], he never saw Lopez with any drugs. He characterized him as a "car person" who loves to fix cars. He was then asked if his characterization of Lopez would change if he knew that Lopez had testified under oath that he bought two bags of marijuana which he attempted to swallow when approached by the police. Edmondson replied that would be a "shocker" to him because he does not associate with people who "smoke weed, who do anything, who smoke cigarettes or any of that." Edmondson clarified that from what he knew, Lopez was not a person who used drugs. He admitted that he made an assumption that Lopez did not have any contraband, and based this assumption on never having seen Lopez possess contraband.

Edmondson said he was certain that the first time he saw Lopez, the police had him and two others up against a wall. He agreed that a month after the incident, he told CCRB that he saw Lopez speaking with friends and then saw the police run up to him. He reiterated that Lopez was inside a courtyard, which had a gate. Lopez was behind the gate when the officer put his finger in his mouth.

On redirect examination, Edmondson testified that the green van is similar to a passenger van. He said this van had a window in the front, next to where Lopez was "being slammed down...." Edmondson recalled that after Lopez bit the officer, he ended up on the floor. In the process, his pants were taken down and Edmondson was able to see "the lining in his ass." He added that "it didn't look like he was searching, searching; he just looked like he was opening his ass for some reason like he is looking for something."

During re-cross examination, Edmondson stated that the officer had his right hand on Lopez's belt, while he was putting him on the ground. He agreed that his testimony was from his observation when Lopez was being put on the ground.

The Respondent's Case

The Respondent called Detective Kevin Mazza as a witness and the Respondent testified in his own behalf.

Detective Kevin Mazza

Mazza is a nine-year member of the Department and is presently assigned as an investigator in Bronx Narcotics. He has worked with the Respondent for about three years.

Mazza recalled that on February 9, 2007, he was a member of Bronx Narcotics assigned to the field team's prisoner van and was working with the Respondent. A "buy and bust" operation was being conducted that day. At one point, Mazza arrived on [REDACTED] because he received "a transmission that undercover [officer] had bought narcotics on the block and they were giving a description of the individuals he bought the narcotics from." As he arrived at the location, he noticed the Respondent and Detective Roberts with two individuals stopped on the sidewalk. The Respondent's attention was directed towards one of the individuals, Carlos Lopez.

When Mazza got out of the prisoner van, he walked up to the Respondent. He wanted to "speak into his ear so the gentleman he had stopped couldn't hear that we had undercovers out of the car." Mazza stated that when the Respondent took his attention off of Lopez, Lopez reached into his pants, into his "groin area" and removed a bag with

both of his hands and “put it directly into his mouth.” Mazza indicated that he could not see what was in the bag. At that point, a struggle ensued in attempting to place Lopez under arrest.

Mazza testified that Lopez went “totally berserk, starts throwing punches, kicking. The struggle winds up on the floor. I mean, he was going berserk. It took three of us to subdue him, to get his hands behind his back. During the struggle, I heard [the Respondent] saying numerous times don’t bite me, stop resisting, stop resisting. Then I heard [the Respondent] screaming. I guess he was getting bit at that point. Detective Roberts came over and helped us place the gentleman under arrest...and he was escorted to the prisoner van.” From the time that he moved onto Devoe Terrace until the struggle with Lopez, Mazza estimated that the entire incident lasted one to two minutes.

Regarding his responsibilities while assigned to the prisoner van, Mazza said he is responsible for ensuring that a prisoner does not have any weapons before he is placed in the van. He also must make sure that a prisoner does not have any contraband that can be passed to another prisoner or ingested. Mazza testified that he could not believe how Lopez “went that berserk for what he had at that point.” He explained that he found Lopez’s demeanor in screaming, kicking and punching unusual considering he had a couple of bags of marijuana. He “didn’t think anybody would go that nuts.”

Mazza further believed that Lopez was in possession of something else when he was arrested. According to Mazza, when a prisoner is placed in the prisoner van, a search is conducted of the person’s pockets, layers of clothing, their waistband, and “anywhere anything can be concealed or a weapon can be hidden...” As to Lopez’s arrest, Mazza did not personally complete this search although he said one was done.

Mazza never observed Lopez being strip searched on the street. He never observed him standing up with his pants around his knees or ankles. Additionally, he said he "absolutely" did not see any member of the service conduct a cavity search on Lopez at the scene of the arrest.

Mazza affirmed that he and the prisoner van were present for the entirety of the struggle in placing Lopez under arrest. Between five and ten minutes elapsed between the time Mazza arrived at the scene with the prisoner van and the time that Lopez was placed in the van. At some point, Mazza got back into the van, and for the rest of the day, he remained with the prisoners.

After being processed at the stationhouse, Lopez was taken to a hospital because he "was complaining his hand was bothering him." Mazza testified that upon arriving at the hospital, Lopez acted "like he was our best friend. He was laughing and joking with us." When Mazza asked why they were wasting time at the hospital, he claimed that Lopez said, "I got to do what I got to do." Mazza interpreted this to mean that "Basically, he fought and he is just going to the hospital to make up a story to cover him now."

Mazza testified as to the proper procedure in narcotics for strip searches. He acknowledged that the search would be conducted of an individual arrested for possession of marijuana, and such a search would be conducted in a precinct. He was unsure if this occurred with Lopez. He indicated that procedure would require a sergeant to make "an entry" that the search was conducted at the precinct.

On cross-examination, Mazza acknowledged that he has been assigned to narcotics for about three years and has worked with the Respondent for his entire tenure

at that command. He indicated that he has participated in or conducted over 300 arrests, the majority of which were narcotics related. He agreed that he has been trained in tactics relating to narcotics operations and said that on two or three occasions, he was trained in search and seizure tactics. Mazza did not know the exact dates that he completed this training, but said he was trained annually. The tactical training that he received is one day in duration and addresses subjects such as search warrants, searching prisoners, and field testing narcotics. It does not cover strip or cavity searches.

Mazza testified that when he was initially assigned to narcotics, he completed a two week training course. He indicated that at that training, strip searches were addressed. Specifically, that such a search was not to be conducted in public under any circumstance. Mazza has conducted strip searches himself and he agreed that it typically involves exposing the skin. He said he was not instructed that a strip search encompasses exposing undergarments.

Mazza indicated that he was assigned to the 52 Precinct in May of 2004. He acknowledged that he is familiar with what a FINEST message¹ is and agreed that they are important messages sent to commands regularly. Mazza further agreed that these messages educate patrol officers and address matters such as missing persons. The messages are also used during roll calls, where patrol officers receive instructions from their supervisors about pertinent information. Mazza said that on May 13, 2004, and for ten days after, he did not attend roll call. He specified that he was assigned to the Domestic Violence Unit and would announce his presence to the desk officer and then go "straight upstairs." He was therefore not required to attend the roll calls and by not

¹ An official, interdepartmental message broadcast via the Department's FINEST message switching system.

attending Mazza was not present for instructions regarding a FINEST message defining a strip search.

In his assignment to the prisoner van, Mazza agreed that it is his responsibility to ensure that the van is not compromised. It was his normal practice to search the van on a daily basis, prior to transporting any defendants. Mazza described the prisoner van as a caged van with hard metal benches on each side. The center is an open area. He agreed that a visual inspection would reveal any contraband in the open area.

Mazza reiterated that he arrived at the scene of the arrest in the van. He was not operating it. He restated that he got out of the van in order to give information to the Respondent, and he "leaned over to tell him what was going on, and as soon as he saw the opportunity when he thought we weren't looking at him, he reached into his pants." This led to the belief that Lopez was in possession of narcotics or a weapon.

Mazza said he was present for the entire encounter between Lopez and the Respondent. He agreed that all of a sudden, Lopez became upset and angry. Mazza never saw Lopez's buttocks or his pants being removed. He was there when Lopez was on the ground but he was unable to describe how the Respondent searched Lopez because he was not watching. Mazza stated that after Lopez was handcuffed, Mazza turned around to make radio transmissions to apprise a lieutenant of the situation. He testified that he "took a step back, got on the radio, told him what transpired and he was on his way over. The defendant was already in cuffs. So he was secure at that point. I took a step back, and I got on my radio to tell the lieutenant what happened."

Mazza reiterated that he was present for the entire time of the Respondent's encounter with Lopez, including when he eventually ended up on the ground. Mazza

helped handcuffed Lopez but he did not see him maced. Mazza further explained that everyone “went to the ground trying to get [Lopez’s] hands behind his back.” He added that “After he stood up and everything, I walked him over to the van and places him in the van.”

While Mazza agreed that he was responsible for ensuring that Lopez was not hiding any weapons, he specified that he did not search him because his property had already been secured in an envelope. Mazza explained that whoever secured a prisoner’s property in an envelope was the person responsible for searching that prisoner. He also noted that the area in which Lopez was arrested was a volatile one, “known to get objects get thrown off the roof at you.” Because of safety concerns, it was a priority to “get out of the area at that point, get all the prisoners to safety, including [Lopez], his safety and our safety. Once the envelope was handed to me, we got in the van and drove off the block.”

Mazza agreed that while he was present at the scene of the arrest, he was not looking at Lopez constantly. He indicated that it was a possibility that the Respondent would have had an opportunity to expose Lopez’s buttocks.

When asked to describe how the Respondent was bitten by Lopez, Mazza indicated that he could not see. He was behind Lopez attempting to secure his hands behind his back. Mazza knew, however, that the Respondent had been bitten because he went to the hospital subsequent to the arrest. Additionally, during the struggle, he heard the Respondent tell Lopez not to bite him and scream.

On redirect examination, Mazza indicated that Lopez was not the only defendant being arrested at the time. Detective Roberts had stopped another individual, four to five feet from where Lopez was. That person was ultimately handcuffed.

Mazza reiterated that he was speaking to a lieutenant over the radio, requesting his presence at the scene. He noted that the field team was also pursuing other individuals at the time that Lopez was being arrested; those members of the team were not near Mazza.

During re-cross examination, Mazza could not recall how many prisoners he transported the day of Lopez's arrest. He thought it was probably less than 10. He said the majority of the time, prisoners are secured in seatbelts and they are all handcuffed. Despite this, he claimed that it was possible for a prisoner to unbuckle their seatbelt by reaching to the side and releasing the buckle. Mazza affirmed that he is able to look back, through the cage in the rear of the van.

Mazza indicated that he did not personally search Lopez because of the potential for a volatile situation to erupt at the scene. He saw individuals hanging out windows, and a few people in the street. He was unable to cite how many people because the incident occurred two years ago.

On inquiry by the Court, Mazza did not recall who handed him the envelope with Lopez's personal belongings contained in it. He specified that the envelope is a manila envelope with information on the front and property is placed inside after a prisoner is searched. Once he received the envelope, Mazza understood that Lopez had been searched already. For safety concerns, he said, he wanted to leave the area after receiving the envelope.

On continued re-cross examination, Mazza testified that a few people were on the sidewalk. He did not recall telling CCRB that he did not believe a crowd had gathered. He reiterated that there were a “few people” on the sidewalk and a “few people” at the window. Mazza said, “We had just gotten into a tussle with [Lopez]. I wasn’t counting people in the sidewalk and in the windows. I was trying to get out for my safety.”

The Respondent

The Respondent has been a member of the Department for approximately eight years. He said he has been a detective since March of 2007, and is presently an investigator in Bronx Narcotics. In his tenure, the Respondent stated that he has made or assisted in thousands of arrests. He has never been the subject of any formal discipline.

The Respondent affirmed that he knew Lopez as the subject of an anonymous complaint that he had received, a complaint which is referred to as a “kite.” This complaint indicated that drug sales were occurring at 2485 Devoe Terrace, Apartment 1E. In conducting an investigation into this complaint, the Respondent identified Lopez through various computer checks. Through further investigation, the Respondent obtained a photograph of Lopez through a computer program called “Photo Manager” and also determined that Lopez had a NYSID² number, indicating that he had previously been arrested.

On February 9, 2007, the Respondent testified that he was participating in a “buy and bust” operation with his narcotics team. The Respondent characterized Devoe Terrace as a small block with “hundreds of narcotics complaints,” particularly, number

² New York State Identification Number, A unique identifier assigned to an individual by the New York State Division of Criminal Justice Services (DCJS).

2485, where Lopez lived. After receiving a notification that a "positive buy" had occurred, meaning that an undercover detective purchased narcotics from someone on the block, the Respondent said that he arrived on Devoe Terrace in a vehicle along with Detectives Deferios and Roberts and a field team. The Respondent specified that his arrival on Devoe Terrace had nothing to do with Lopez at that point.

Upon his arrival on Devoe Terrace, the Respondent recalled that he saw Lopez standing with two individuals. He saw him "hand a quantity of small objects to one of those individuals." He noted that he recognized Lopez as the subject from his investigation of [REDACTED]. The Respondent testified that his training and experience led him to believe that a narcotics transaction had just occurred. He did not see where Lopez had retrieved the objects from on his body.

The Respondent approached Lopez and the two individuals. He testified that the person who received the items from Lopez ran away and was not apprehended. At the same time, the other members of the narcotics team were involved in an unrelated undercover transaction that had previously occurred. On inquiry by the Court, the Respondent affirmed that he approached Lopez because he believed that he conducted a narcotics transaction and intended to arrest him. The Respondent said he approached Lopez, identified himself as a police officer, and directed him to place his hands on a vehicle. He noted that this occurred on a sidewalk, outside of the building directly across from 2485 Devoe Terrace.

As to the video in evidence (DX 1), the Respondent acknowledged that he reviewed it prior to offering testimony. He testified that the location depicted on the video showed a "higher vantage point of the building across the street from 2485 Devoe

Terrace. From that vantage point, what you see is a courtyard and outside that courtyard is myself searching Defendant Lopez.” The Respondent explained that he initially stopped Lopez “on the street line” near where the cars are parked. Lopez was not against the building, and the Respondent said that the only person against a building was the person stopped by Detective Roberts.

In further explaining his encounter with Lopez, the Respondent said that he engaged him in conversation and told him that he had an investigation “pending on him and on his place of residence.” The Respondent said that Lopez “looked shocked” that he knew Lopez’s name and address. Before handcuffing Lopez, the Respondent said that he was “attempting to conduct a preliminary field search.” In the process of his search other members of the field team had arrived and Mazza approached him to tell him something, and the Respondent saw Lopez “go into his pants area, his crotch area, pull something out, and place it into his mouth.” The Respondent said that as Lopez pulled the items out he grabbed Lopez’s hands, but Lopez was able to transfer the item in his hand into his mouth. At the time, the Respondent believed the items in his mouth were narcotics and a struggle ensued because the Respondent “wanted him to spit the objects out of his mouth, get the objects out of his mouth.”

The Respondent testified that he was concerned for Lopez’s safety, as there was a possibility that he could choke or overdose on what he put in his mouth. He also noted that the items were needed as evidence and therefore he sought to ensure Lopez’s safety and the preservation of the evidence. Although he directed Lopez to spit the items out, Lopez failed to comply. The struggle continued and consisted of Lopez “punching” and “kicking,” while refusing to open his mouth. The Respondent used pepper spray “to try

to have him open his mouth. Sometimes when you use pepper spray, it will force your mouth open because of the effects of the chemicals. And that didn't work." At a certain point in the struggle the Respondent was able to insert his fingers into Lopez's mouth where he felt the objects inside. He told Lopez that he was taking the items out and instructed him not to bite him. Lopez, however, bit him anyway, preventing him from removing what was in his mouth. The Respondent stated that when Lopez bit him "of course I feel pain so I scream out from agony of the pain." He added that Mazza was "also helping me with the guy....We are both screaming at him, stop resisting, stop resisting, give us the items. And he was just punching, kicking, flailing his arms, just refusing to be handcuffed. He was a strong individual."

The struggle continued on the ground. The Respondent said that eventually, Lopez spit the items out of his mouth, although he was unsure of the time frame of when this happened.

After Lopez was handcuffed, the Respondent said that "everybody, you know, since the individual is isolated and contained at that point, you know you take a step back, a natural step back to catch your breath, and I begin what you see on the video, a secondary search." He explained that this search was to ensure that Lopez had no weapons to hurt himself or another person or further contraband on his person. The Respondent also said that prisoners are placed into the prisoner van with no property in their pockets; any personal property that a prisoner has is placed into a manila envelope. A strip search can be conducted at the precinct at the direction of a supervisor. The Respondent testified that such a search is conducted to ensure that a person does not have contraband in a bodily orifice, "anus, mouth," and this search occurs in a precinct. He

added that “we don’t conduct cavity searches at all;” the strip search is visual in nature.

The Respondent noted that if there is a suspicion that a person has an item secreted in a cavity, it is Department policy to contact the District Attorney’s office for a search warrant. The Respondent said that he “absolutely” did not conduct a cavity search of Lopez, and similarly, never touched his anus or testicles.

The Respondent testified that a prisoner’s property is placed in a manila “prisoner envelope” because they are not allowed to have any sort of property on their person. In the absence of a thorough search, the Respondent indicated that it could be possible that a prisoner could pass or destroy evidence.

A thorough search was not able to be conducted of Lopez while he was standing up as a result of the struggle. The Respondent reiterated that the video (DX 1) shows him conducting a search of Lopez’s “lungeable area.”

The process of checking Lopez’s pants for contraband did not take long. The Respondent said he never reached into Lopez’s anus or testicle area. Subsequent to his search, Detective Roberts escorted the Respondent to the hospital because he was bleeding from his hand. There, the Respondent was treated for a laceration to his right index finger. He had no further contact with Lopez that night.

On cross-examination, the Respondent indicated that he has worked in Narcotics since September of 2005. He affirmed that he attended training in tactics and search practices, and this training addressed conducting strip searches. The Respondent said he was trained in conducting strip searches on two occasions, once when he was assigned to the 41 Precinct Street Narcotics Enforcement Unit (SNEU), and again during the three-week narcotics investigator training school. A small percentage of that three-week

course concerned strip search tactics. The Respondent agreed that a strip search is defined as an "obvious exposure" of a private area such as the buttocks or breast. However, he did not recall being instructed that such a search includes exposure of undergarments.

The Respondent said that he was assigned to the 41 Precinct SNEU in May of 2004. In that capacity, he was not required to attend roll call. When shown a copy of a FINEST message pertaining to strip searches, the Respondent said that he was familiar with some, but not all of it, but he did not "recall being instructed on that particular FINEST message...." Additionally, he said that he was never instructed on the contents of that particular message.

The Respondent stated that he approached Lopez because he believed that he conducted a hand-to-hand narcotics sale and not because he was the subject of an investigation. He clarified that he recognized Lopez upon approaching him, and further explained that he approached him because he saw him hand "small objects" that he believed were narcotics to another individual. The Respondent acknowledged that he did not recover any drugs from a buyer nor was a buyer apprehended.

Upon approaching Lopez, the Respondent stated that he engaged him in conversation. He did not recall what he asked him, but informed him of his investigation and he identified him by his name, address and apartment number. He reiterated that when he turned to speak with Mazza, he saw Lopez "make a strong gesture towards his pants towards his crotch area." Thereafter, he observed him take an item wrapped in plastic "and as he was lifting that towards his mouth, I was able to place my hands on his hands or on his wrist area and he was able to physically lift my hands with him. My

hands were pulling down, his hands were pulling up towards his mouth, and he was able to pull his hands up towards his mouth.”

The Respondent indicated that one reason he placed his hands in Lopez’s mouth was in an effort to prevent him from swallowing anything that could harm him. Similarly, he also sought to secure evidence. Lopez subsequently bit the Respondent and the scuffle continued to the floor, where he resisted arrest, fought with officers and was punching and kicking. The Respondent said Lopez was not being compliant.

The Respondent reiterated the importance of conducting a proper search, for the safety of the officers in the prisoner van, the safety of other prisoners, and for preserving evidence. He acknowledged that a thorough search encompasses “head to toe,” including patting the defendant’s head, outer area and the bottom part over the clothing. He further agreed that once Lopez was on the ground, he searched him from head to toe to ensure that he had no weapons, and this included checking his pockets, clothing and on top of the clothing. The Respondent assented that he grabbed Lopez’s pants area by his belt and pulled “probably” in an upward manner to ensure that he had no weapons in his “lungeable area.” He denied that he ever grabbed three items of his clothing, and indicated that the first layer was all that he pulled. The Respondent did not recall pulling the second layer of pants. He said that it was a possibility that Lopez’s buttocks were unintentionally exposed during this process.

The Respondent affirmed that he pulled the first layer of Lopez’s clothing. He did not recall how far up he pulled, but said it would have been far enough to ensure no weapons or evidence was contained in his lungeable area. The Respondent said that it was a possibility that he pulled more than one layer but did not recall doing so, and added

that it was “never my intent to show any skin or underwear.” Similarly, in pulling the layer of clothing, the Respondent said that it was a possibility that Lopez’s buttocks were unintentionally exposed. The Respondent denied that he exposed the “crack” of Lopez’s buttocks, this is something that he would have recalled. He explained that “I know that I did not do that because I would have remembered pulling the guy’s pants down to expose his, as you call it, crack.” He added that “I never pulled any article of clothing that he had down below his crack.”

With respect to the video (DX 1), the Respondent agreed that the entirety of his interaction with Lopez is not contained on it. He agreed that all that was on the video was a search of Lopez, and said, “The only thing that I see on that video is properly good police work.” In this video, the Respondent saw himself standing over Lopez. The video does not show the struggle, Lopez biting the Respondent or the hand-to-hand transaction that occurred.

The Respondent did not recall how many people were present in the area when Lopez was arrested. Nor did he recall stating at his CCRB interview that officers receive “air mail”³ during routine operations. The Respondent was then asked if he recalled the following from his interview:

Q: You tried not to linger on the street too much?

A: Exactly. That’s why we get air mail.

He replied that “If it’s on there (the transcript), I said it.” He disputed that the remark indicated that people were on the street where the arrest occurred. The Respondent again stated that he did not recall if people were on the street during the arrest.

³ The Respondent explained that this is a term used to refer to “anything that may come off any windows that are above our heads. It could be anything from an egg to a refrigerator. Anything.”

The Respondent did not recall conferring with a supervisor as to the manner in which he searched Lopez. He agreed that Lieutenant Burke was on the scene, but contended that he did not need instruction or direction from a supervisor to perform the type of search that he did. He added that there was no need to ask permission to search Lopez.

When asked what his purpose was in looking in Lopez's "buttocks area" by pulling his pants, he denied ever looking in that area. He clarified that his intent in pulling on the upper layer of Lopez's pants was to ensure no weapons or contraband was secreted in that layer. He testified that he was looking for "handguns, knives, syringes, anything." The Respondent disputed that touching Lopez's outer area would have revealed a weapon. The Respondent admitted that if Lopez had a firearm in his "butt cheeks," it would not have been detected from the outer portion of the clothing because he would not have stuck his hands in his "butt cheeks." Although the Respondent said he used his hands to feel the outside area of Lopez's clothing, he noted that a knife would not necessarily be detected in this manner. The Respondent indicated that in doing this, he did not feel any bulges. Despite not feeling any bulges, the Respondent agreed that he proceeded to pull Lopez's pants area. He explained his reasons for doing so:

Because not only was I looking for a weapon, and if it was a knife, I may not have been able to feel that from the outside. I may have needed to do a more detailed search. Knives—not all knives are one generic size. They come in all different sizes. All guns come in different sizes. Any type of weapon can be hidden there that you may not be able to feel. Again, I was not only looking for a weapon, also. I was also looking for contraband, contraband that the individual would not pass off to someone in the van, or have someone swallow it, or him consume it himself and maybe kill someone else or himself by doing that.

The Respondent admitted that anything that Lopez may have secreted would have been found during the strip search at the precinct. The Respondent noted, however, the possibility for prisoners to pass "things" in the van between the time of arrest until arriving at the precinct. If items were passed in the van, they would not have necessarily been discovered during a strip search at a precinct.

The Respondent agreed that even if he did not find contraband on Lopez, he would have still "transported" him because he believed that he was involved in a drug transaction. Additionally, he agreed that a strip search would have been done in the precinct, in an "utmost private area."

During redirect examination, the Respondent testified that he did not believe that his search of Lopez on the sidewalk constituted a strip search under the Patrol Guide. He reiterated that the video (DX 1), does not show the entirety of his encounter with Lopez, but indicated that his entire search of him is depicted in the video.

FINDINGS AND ANALYSIS

The two specifications in this case charge the Respondent with wrongfully conducting a strip search of Lopez outside of a police precinct by lowering his pants and revealing his underwear and buttocks; and with abusing his authority in conducting a cavity search of Lopez.

On February 9, 2007, the Respondent while part of a narcotics "buy and bust" operation saw Lopez on [REDACTED] a location known for drug sales, and observed

him exchange something with another individual which the Respondent, from his training and experience, believed to be drugs.

The Respondent approached Lopez and according to Lopez's version of what occurred the Respondent, after beating Lopez, pulled his pants down exposing his buttocks and conducted a cavity search as he lay on the ground on [REDACTED]. This Court finds the Respondent Not Guilty because Lopez's testimony was inconsistent with his prior statements, inconsistent with the video that depicted the search, and because he displayed a cavalier attitude regarding the accuracy of what occurred.

It is not in dispute that Lopez was in possession of marijuana, on [REDACTED] where he was apprehended and arrested. He stated that he purchased the "two bags of weed" approximately one block from that location and planned to smoke it at home.

Lopez's version of what led to his arrest, however, contains major inconsistencies. He claims to have been on [REDACTED] the block where he lives, talking on the telephone with his girlfriend when Harrison informed him that a guy across the street "looked funny" meaning that he was an undercover police officer. When asked why Harrison would warn him of the presence of an undercover officer he glibly replied "I guess he had nothing better to do."

Lopez was then approached by police officers, including the Respondent, who began to search his coat pockets, his sweater and jeans. He claims to have become nervous and scared of being arrested for the marijuana and decided to put the two bags in his mouth. He stated that the Respondent then "stuffed his finger" into his mouth and Lopez essentially attacked the Respondent by biting his finger. He then heard the

Respondent scream in pain and at that point the officers “jumped on top” of him, maced him, threw him to the ground and handcuffed him.

According to Lopez, the Respondent then pulled down the three layers of clothes he had on and started searching his butt area. He stated that he knew his clothes had been removed because he “felt the cold on my butt area.” He further claimed that he felt the Respondent’s hand on the “inner and outer” parts of his buttocks.

He also pointed to the video (DX 1) and said that while it did not show him being thrown to the ground, beaten and maced, it did depict the search of him where it showed the Respondent standing over him, rolling him over, pulling his pants down and searching his “butt area.” He insisted that the video showed that all three layers of his clothing were pulled down “to my butt area...close to my mid thigh.” His demonstration in Court had him indicating that he pants were removed approximately 7 inches below his waist line. When he was confronted with his prior statement where he stated that he was lying there “butt naked like in the shower” he at first denied making that statement, but when it was read to him in court he cavalierly stated “I mean I probably over-exaggerated the situation.”

Lopez maintained, at trial that he was punched and kicked by three or four officers, who struck him “once or twice.” When he was reminded that he previously told CCRB investigators that he was hit more than 10 times he became defensive and testified “I don’t recall what I told them...” and denied that he exaggerated the incident claiming that “It happened over a year ago. My memory is shot.”

Lopez insisted that he did not struggle with the officers and that he was not maced. But when he was again confronted with his prior statements to CCRB

investigators where he told them that “as soon as I got maced, that’s when I gave up. I couldn’t take the mace. I gave up so he could cuff me or pick me up off the floor.” He admitted to making these statements to investigators, but even in the face of his own words he continued to perpetuate the false notion that he did not struggle with the officers.

Lopez also could not remember telling CCRB investigators of his serious allegation that the Respondent was grabbing his testicles stating that “It happened a year ago. I don’t recall that.” But when he was again reminded that he told investigators “... that’s when he was—the Hispanic one...he was searching my butt cheeks and all that outside, grabbing my balls and all that” he then seem to remember making that statement and contended that the video depicted this as happening. He then, referring to his testicles in the video stated “They sit right there, they not too far. I got big testicles.” When he was asked if he over-exaggerated the incident to the CCRB investigator he shamelessly replied “I mean, I got a good sense of humor.”

This Court finds that Lopez’s testimony is not only rife with inconstancies and arrogance it is also filled with exaggerations and contradictions at to what is actually depicted in the video. A review of the video, while relatively short and taken from a distance from an upper floor of a building shows the Respondent standing over Lopez. At one point he bends down and while lifting layers of clothing runs his hands around Lopez’s waistband. At no point does it appear that the Respondent’s hands disappear inside Lopez’s clothing, nor does it appear that Lopez’s pants are pulled down below his waist area exposing his “butt area” to a cavity search and he is certainly not naked like he would be in the shower as he claimed to the CCRB investigators.

The only conclusion this Court can arrive at in explaining the contradictions between Lopez's testimony and the video, as he readily admits, is that he did not view the video prior to giving his statements to CCRB investigators. While his exaggerations were recorded by investigators the actual events of what occurred, unbeknownst to him, were recorded on a video camera.

Edmondson acknowledged that Lopez is his friend who he refers to as "Lopes." He states that he saw Lopez stopped by the officers and that they were being "a little rough" on him.

Edmondson was located in the middle of the street where he claimed to have seen an officer "pull his pants down where I seen his butt cheeks and put his hands on it like to spread his ass or some shit like that." He stated that his view of what occurred was "somewhat" blocked but he knew he saw Lopez's buttocks. He refuted his prior statement to investigators that a green truck was blocking his view saying that if he were to tilt his head he could see everything.

Edmondson recalled that after Lopez bit the officer he ended up on the floor and his pants were taken down and he was able to see from the middle of the street "the lining of his ass." He added that "it didn't look like he was searching, searching; he just looked like he was opening his ass for some reason like he is looking for something."

The difficulty this Court has with Edmondson's testimony is that what he claims to have seen with regard to the search of Lopez is in direct contradiction to what is depicted in the video. Even Lopez admitted that the video, while only "60 seconds" long, depicts the search of him by the Respondent. And nowhere in the video can this Court see the Respondent "opening [Lopez's] ass" to look for "something." The only

conclusion that this Court can draw from Edmondson's testimony is that he did see Lopez struggle with the officers after he bit the Respondent and go to the ground where he was searched for contraband and weapons. But it does not appear from the physical evidence that he could have seen the type of physical search that he testified to. When he was tilting his head to see around the green truck he may have assumed that Lopez's body was more exposed or perhaps he may have even had a conversation with his friend "Lopes" after the incident to cause him to conclude what he did. This Court, however, does not have confidence in his testimony based on the video and the unreliable testimony of Lopez.

In contrast Mazza, who was present during the entire search, never observed Lopez's pants down to his knees or ankles never saw him being stripped searched and he absolutely did not see any member of the service conduct a cavity search of him. Moreover, he observed Lopez at the stationhouse laughing and joking with the officers. When Lopez was taken to the hospital complaining that his hand was bothering him Mazza asked him why were they wasting time at the hospital and Lopez told him "I got to do what I got to do" which Mazza interpreted to mean that since he fought with the officers he had to make up a story to cover himself.

In the opinion of this Court, the Respondent's version is a credible account of what occurred in that it is straight forward and consistent with what is depicted on the video.

The Respondent, an experienced narcotics investigator, observed Lopez conduct what he believed to be a drug transaction with an unapprehended individual. He did not recognize Lopez when he first saw him, but when he approached him the Respondent

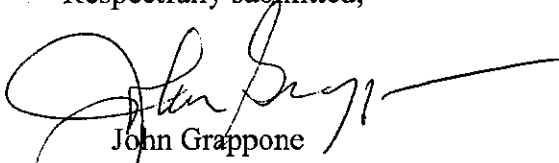
realized that he recognized him as the subject of an anonymous complaint of drugs sales. Before handcuffing him he attempted to conduct a preliminary search of Lopez when he observed Lopez retrieve something from his crotch area and put in his mouth. The Respondent, believing the objects were narcotics, grabbed Lopez's hand and directed him to spit the items out of his mouth. Lopez began punching and kicking and refused to open his mouth. The Respondent used pepper spray to get him to open his mouth and when that failed the Respondent inserted his fingers into his mouth and Lopez proceeded to bite him. The Respondent screamed in agony and both the Respondent and Mazza screamed at Lopez to stop resisting and give up the items. Lopez continued to punch, kick and flail his arms while refusing to be handcuffed. The struggle continued on the ground where Lopez eventually spit out the drugs.

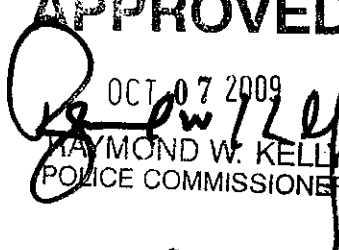
After Lopez was handcuffed on the ground he was searched as depicted in the video. The Respondent further described his search of Lopez where he stated that he lifted Lopez's first layer of pants and patted his hand through the top of his waistband to see if he had any objects. Lopez was wearing two layers of pants—one underneath his jeans, which the Respondent described as "common practice" for drug dealers. Next, he slid his hands under the jeans to see if the second layer of pants had pockets. The Respondent admitted that although it may have been a possibility that Lopez's buttocks were exposed while he checked the second pair of pants, it was never his intent to expose any skin, underwear or the sweatpants. Rather, the Respondent's reasonable intent was to ensure that Lopez, who readily displayed his violent nature by biting the Respondent and fighting with the officers, did not have a weapon. The Respondent credibly testified that he, as depicted in the video, never reached the lower area of Lopez's anus or his testicle

area during his search. Consequently, the evidence presented to this Court gives no credible showing that the Respondent wrongfully conducted an strip search or cavity search of Lopez.

Based on the foregoing, I find the Respondent Not Guilty of Specification Nos. 1 and 2.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner - Trials

APPROVED
OCT 07 2009

RAYMOND W. KELLY
POLICE COMMISSIONER